Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Petition of USTelecom for Forbearance	)	WC Docket No. 18-141

REPLY COMMENTS OF CENTURYLINK

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TABLE OF CONTENTS

Page

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CenturyLink, Inc.[1] hereby files these reply comments in support of USTelecom's Petition for forbearance (*Petition*).

I. INTRODUCTION AND SUMMARY

Back in the days of payphones and pagers, and long before Facebook and the iPhone, Congress enacted the Telecommunications Act of 1996, with the ambitious goal of providing consumers and businesses choices for telecommunications services, particularly through intermodal competition. The legislation established baseline requirements that applied to all local telecommunications providers, such as interconnection, number portability, and reciprocal compensation. But it also imposed extraordinary and unprecedented market-opening requirements on ILECs alone, given their historical dominance of local markets and high market shares. These requirements were intended to "jump start" local competition by allowing the ILECs' competitors to share components of ILEC networks at low regulated rates and buy their retail telecommunications services for resale at discounted rates. The Act also allowed ILECs to enter long distance markets, but only after proving that they had complied with the requirements

[1] This submission is made by and on behalf of CenturyLink, Inc. and its wholly owned subsidiaries.

of Sections 271 and 272, by opening their local markets and following strict separate affiliate requirements. These comments address all three categories identified in the Public Notice.[2]

In enacting these provisions, Congress recognized that the 1996 Act's regulated entry methods and restrictions were temporary means to facilitate sustainable facilities-based competition. It therefore included Section 10, which requires the Commission to forbear from enforcing statutory provisions and rules if it concludes that the forbearance criteria in the statute are met.

The 1996 Act has succeeded beyond anyone's imagination. Cable operators invaded and succeeded in telecommunications markets, not only for consumer services, as somewhat anticipated by Congress, but also for the spectrum of business services. And less anticipated, a solid majority of Americans have abandoned wireline voice connections in favor of mobile wireless. The result is that ILECs now provide such connections to only 11 percent of U.S. households.

ILECs' former hold on business markets is just as attenuated. Like residential customers, businesses have rapidly moved away from the ILECs' TDM voice services, in favor of more advanced, integrated, and efficient VoIP services, more often than not furnished by non-ILEC providers. CLECs have had similar success with business data services (BDS). Last year, the Commission confirmed that ILECs are not dominant providers, *anywhere* in the U.S., for any of the fastest growing data services purchased by business customers: Ethernet, Wave and other packet-based BDS. The Commission also found them nondominant on a nationwide basis for

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[2] *Pleading Cycle Established for Comments on USTelecom's Petition for Forbearance from Section 251(c) Unbundling and Resale Requirements and Related Obligations, and Certain Section 271 and 272 Requirements*, WC Docket No. 18-141, Public Notice, DA 18-475 (May 8, 2018). Category 1 is addressed primarily in Section III, and Categories 2 and 3 are addressed primarily in Section IV.

transport services,[3] including dark fiber, and that they lack dominance in the provision of DS1 and DS3 channel terminations, except in certain limited areas where there is little demand for those services and where they remain subject to price cap regulation. This applies both to business data services and their UNE counterparts, such as DS1s and DS3s, which are identical but sold at below-market rates. Long distance services are not only competitive but generally are no longer offered as a separate product, as wireline and wireless competitors typically offer all-distance calling plans. While about two million UNEs remain in place, UNE- and resale-based services have played little part in this transformation of the market.

The CLEC commenters downplay these marketplace developments and seek to maintain the burdensome and asymmetric mandates at issue here in perpetuity. Yet they provide no legitimate justification for this draconian result, which directly conflicts with the intent and letter of the forbearance statute.

The time has come for the Commission to exercise its forbearance authority to eliminate the 1996 Act's outdated unbundling, ILEC-specific resale requirements, remaining Section 271 and 272 provisions addressed by the *Petition*, and Commission Rule 64.1903. In fact, Section 10 compels the Commission to do so. None of these ILEC- or BOC-specific requirements are necessary to ensure just and reasonable rates and practices or to avoid unreasonable discrimination. The fundamental transformation of residential and business markets over the past twenty-two years and the prevalent competition that characterizes these markets has eliminated any need for the 1996 Act's backward-looking unbundling, ILEC resale, and remaining Section 271/272 requirements. For the same reasons, these requirements are

[3] The 8th Circuit's reversal of the Commission's transport decisions on notice grounds does not affect the legitimacy of that finding or the record evidence on which it relied.

unnecessary to protect consumers, who seldom purchase services provided via UNEs or resale, and typically can obtain integrated local and long distance services from a variety of facilities-based wireline and wireless providers. Indeed, 99.8% of the U.S. population has access to wireless service.[4] Finally, the requested forbearance will serve the public interest by accelerating the transition from TDM to IP services, reducing inefficient expenditures on aging TDM capabilities, freeing capital for investment in next-generation facilities and services, and eliminating asymmetric regulation that is no longer justified or warranted.

Wireless substitution. Cable ascendance in residential and business services. Growing obsolescence of TDM services. These are nationwide trends. There is no need to undertake the granular analysis outlined in the *Qwest Phoenix Forbearance Order*.[5] As it has done in numerous other orders, the Commission can reasonably conclude that nationwide forbearance is both justified and required here. As the Commission observed in the *BDS Order*, "technological changes that have occurred or are likely to occur in the near future make the Commission's reasoning in the *Qwest Phoenix* decision inapposite."[6] Just last week, the Eighth Circuit

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[4] *See* Andres V. Lerner, *An Economic Analysis of the Impact of Forbearance from 251(c)(3) on Competition and Investments* ¶ 20 (Aug. 6, 2018) (attached as Exhibit A to Verizon's Comments, WC Docket No. 18-141). *See also* CTIA website, *The Wireless Industry; Industry Data*, https://www.ctia.org/the-wireless-industry/infographics-library (99.7% of U.S. population lives in census blocks covered by 4G LTE) (last visited Aug. 31, 2018).

[5] *Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Phoenix, Arizona Metropolitan Statistical Area*, Memorandum Opinion and Order, 25 FCC Rcd 8622 (2010) (*Qwest Phoenix Forbearance Order* or *Qwest Phoenix* or *Qwest Phoenix Order*), *aff'd*, *Qwest Corp. v. FCC*, 689 F.3d 1214 (10th Cir. 2012).

[6] *Business Data Services in an Internet Protocol Environment; Technology Transitions; Special Access for Price Cap Local Exchange Carriers; AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, WC Docket No. 16-143, GN Docket No. 13-5, WC Docket No. 05-25 and RM-10593, Report and Order, 32 FCC Rcd 3459, 3515 at ¶ 122 (2017) (*BDS Order*), *affirmed in part and remanded in part sub nom., Citizens Telecommunications Company of Minnesota, LLC v. FCC*, No. 17-2296, slip op. (8th Cir. Aug. 28, 2018) (*Citizens v. FCC*).

confirmed that the Commission is not bound to extend *Qwest Phoenix*'s traditional market power analysis to the BDS context. Even if the *Qwest Phoenix Order* were to apply, however, the requested forbearance would be justified, as ILECs have surrendered the market power on which the ILEC- and BOC- centric regulations in question was premised.

The fact that the Commission still regulates a small percentage of ILEC DS1 and DS3 channel terminations as dominant does not preclude the Commission from acting here on a nationwide basis. Wherever those services are classified as dominant, they will be subject to tariff and price cap obligations, thus ensuring the availability of just and reasonable rates, terms, and conditions. And the burden of maintaining unbundling, avoided-cost resale, and remaining Section 271 and 272 requirements solely for these areas would vastly outweigh any minimal benefit in these mostly rural counties.

As noted, forbearance from unbundling, Section 251(c)(4) resale, remaining Section 271 and 272 requirements, and Rule 64.1903 will have no discernable impact on competition or consumers, despite CLEC protests to the contrary. As was the case more than a dozen years ago when the Commission eliminated UNE-P, line sharing, and packet switching unbundling mandates, telecommunications competition and investment will continue to grow, fueled by expanding demand for Internet-enabled services. Certain CLECs inevitably complain that the elimination of unbundling and avoided-cost resale will harm their business plans, which are premised on permanent availability of the below-market rates associated with these regulatory requirements. But the forbearance statute does not allow the Commission to retain regulatory requirements simply to preserve particular business plans. The Commission's mandate is to facilitate efficient competition, in this case by granting the requested forbearance.

History also strongly suggests that forborne products will be replaced with commercial arrangements. That is exactly what occurred when the Commission eliminated line sharing in 2003 and UNE-P and unbundled dark fiber loops in 2005. CenturyLink offered commercial replacement products for these delisted UNEs, and still retains CLEC customers for these services. In 2006, CenturyLink introduced a commercial replacement for UNE DS0 loops in nine wire centers in the Omaha Metropolitan Statistical Area (MSA), with similar rates, terms, and conditions, after the Commission eliminated loop and transport unbundling requirements in those wire centers.[7] A dozen years later, it continues to provide this service in Omaha. CenturyLink benefits from keeping wholesale customers on its network and will continue to develop commercial offerings to do so.

CenturyLink acknowledges that the requested forbearance will have a short-term impact on some CLECs and their customers. As a purchaser of UNEs, CenturyLink will have to adjust its business plans as well. CenturyLink does not use UNEs to acquire customers or as a "stepping stone" to fiber deployment but does sometimes shift customers to UNE facilities when their contract term is shorter than that of the customer's underlying access service. CenturyLink believes that the 18-month transition period proposed in USTelecom's *Petition* will provide it and other UNE purchasers ample time to adjust affected business plans.

II. THE *QWEST PHOENIX FORBEARANCE ORDER* DOES NOT PRECLUDE THE REQUESTED FORBEARANCE.

CLEC commenters erroneously claim that the 2010 *Qwest Phoenix Forbearance Order* compels the Commission to deny USTelecom's *Petition,* given its lack of geographically

[7] *See Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Omaha Metropolitan Statistical Area*, Memorandum Opinion and Order, 20 FCC Rcd 19415 (2005) (*Qwest Omaha Forbearance Order*), *aff'd, Qwest Corp. v. FCC*, 482 F.3d 471 (D.C. Cir. 2007).

granular market power analysis. In fact, *Qwest Phoenix* does not apply to USTelecom's *Petition*, and, even if it did, would not preclude the requested forbearance.

A. *Qwest Phoenix* Does Not Apply to USTelecom's Petition.

In the *Qwest Phoenix Forbearance Order*, the Commission rejected Qwest's *Petition* for forbearance in the Phoenix-Mesa-Scottsdale, Arizona MSA from loop and transport unbundling and certain dominant carrier regulations. The Commission found that the record in that proceeding failed to demonstrate sufficient competition to ensure compliance with the Section 10 forbearance criteria.[8]

The *Qwest Phoenix* decision has been superseded both by the competitive facts on the ground and subsequent Commission decisions. That is certainly the case as to the *Qwest Phoenix Order*'s finding that Phoenix consumers effectively faced a duopoly for retail mass market services.[9] Key to that finding was the Commission's exclusion of mobile wireless service from its competitive analysis.[10] Today it cannot be seriously disputed that consumers view mobile wireless service as interchangeable with wireline service. By the end of this year, 60 percent of American households will rely exclusively on wireless services for telephony,[11] a trend that has grown unabated since the *Qwest Phoenix Order*.[12] Two years ago, the Commission ruled that ILECs are no longer dominant providers of switched access services, confirming that the switched access lines "that once dominated the landscape have been

[8] *Qwest Phoenix Forbearance Order*, 25 FCC Rcd at 8623 ¶ 2.

[9] *Id.* at 8665 ¶ 81.

[10] *Id.* at 8655 ¶ 60.

[11] Petition of USTelecom for Forbearance, WC Docket No. 18-141, Petition for Forbearance of USTelecom – The Broadband Association (filed May 4, 2018) (*Petition*) at 8.

[12] *Id.* at 8. At the time of the *Qwest Phoenix* decision, 24.5% of households subscribed exclusively to wireless. *Qwest Phoenix Forbearance Order*, 25 FCC Rcd at 8651 ¶ 55 n.164.

displaced by wireless and VoIP connections."[13] And the Eighth Circuit has now upheld the Commission's most recent departure from the *Qwest Phoenix* decision's duopoly analysis.[14]

The *Qwest Phoenix* decision included similarly outdated conclusions regarding wholesale and retail business services. It found that Qwest was the only significant provider of wholesale services in Phoenix; that Cox, the local cable operator, provided little, if any, wholesale service; and that potential wholesale competition from supply-side substitution or *de novo* entry was unlikely.[15] Those conclusions applied not only to wholesale loops but also to dedicated local transport, along with a finding that Qwest, like other LECs, possessed market power over switched access.[16] *Qwest Phoenix* also concluded that Qwest had not demonstrated the existence of significant actual or potential facilities-based competition for enterprise services.[17]

All these conclusions have been superseded in subsequent Commission orders, primarily on a nationwide basis. In the *BDS Order*, the Commission ruled, on a nationwide basis, that ILECs are not dominant providers of packet-based BDS and TDM-based services with bandwidths greater than a DS3, nor dominant providers of transport services, and that they are similarly nondominant for nearly all the DS1 and DS3 channel terminations they provide.[18]

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[13] *Technology Transitions; USTelecom Petition for Declaratory Ruling That Incumbent Local Exchange Carriers Are Non-Dominant in the Provision of Switched Access Services; Policies and Rules Governing Retirement Of Copper Loops by Incumbent Local Exchange Carriers*, GN Docket No. 13-5; WC Docket No. 13-3; RM-11358, Declaratory Ruling, Second Report and Order, and Order on Reconsideration, 31 FCC Rcd 8283 at 8289 ¶ 16 (quotation omitted) (2016) (*Technology Transitions Order* or *Technology Transitions Declaratory Ruling*).

[14] *Citizens v. FCC*, slip op. at 28 ("[T]he Qwest/Phoenix unbundling adjudication was focused on a particular market at a particular time and . . . has no binding effect on this BDS proceeding.")

[15] *Qwest Phoenix Forbearance Order*, 25 FCC Rcd at 8658-61 ¶¶ 69-73.

[16] *Id.* at 8662-64 ¶¶ 76-79.

[17] *Id.* at 8668 ¶ 87.

[18] *BDS Order*, 32 FCC Rcd at 3498 ¶¶ 83-84.

These conclusions were based, in part, on cable's dramatic entry into and growth in wholesale and enterprise services, which occurred primarily after the *Qwest Phoenix Forbearance Order*.[19] That growth has only continued since the *BDS Order*. For example, Comcast's annual business services revenue now exceeds $6 billion, growing 12.7 percent in 2017.[20] Charter's business revenues were $5.9 billion in 2017, with 37 percent of that for enterprise services.[21] While cable operators often exceed ILECs in market presence, they are not subject to the legacy regulations addressed by USTelecom's *Petition*. Nor are cable operators the ILECs' only BDS competitors.[22] The Commission also explicitly distinguished its analysis in the *BDS Order* from that in the *Qwest Phoenix* Order, given the "technological changes that have occurred or are likely to occur in the near future[,] mak[ing] the Commission's reasoning in the Qwest Phoenix decision inapposite."[23] And, as noted, the Commission concluded in 2016 that ILECs are nondominant providers of switched access services on a nationwide basis.[24]

USTelecom's *Petition* is also distinguishable from *Qwest Phoenix* in that it does not rely solely on competitive conditions to justify forbearance. The *Petition* demonstrates that falling demand for UNEs and resale, a shift away from obsolete TDM services, and the benefits of a faster transition to IP services warrant the elimination of the ILEC-specific requirements at issue, particularly given Congress' intent that these intrusive and burdensome regulations be retained

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[19] *BDS Order*, 32 FCC Rcd at 3485 ¶ 55.

[20] Comcast 2017 Form 10K at 39, available at: https://www.cmcsa.com/static-files/111ba611-eb85-4edc-9000-3907c84697d8.

[21] Charter Press Release, *Charter Announces Fourth Quarter and Full Year 2017 Results* (Feb. 2, 2018), available at: https://newsroom.charter.com/press-releases/charter-announces-fourth-quarter-and-full-year-2017-results/.

[22] *See BDS Order*, 32 FCC Rcd at 3488 ¶ 63.

[23] *BDS Order*, 32 FCC Rcd at 3515 ¶ 122.

[24] *Technology Transitions Order*, 31 FCC Rcd at 8290 ¶ 18.

only as long as necessary.[25] As Verizon notes, the wireline voice services that were the focus of the 1996 Act and comprised three-quarters of the industry's revenues now account for only 16 percent of those revenues.[26]

Under these circumstances, there is no need to undertake the granular analysis employed in the *Qwest Phoenix* decision. Indeed, the Commission recognized in that decision that "section 10 'imposes no particular mode of market analysis or level of geographic rigor,' but rather 'allow[s] the forbearance analysis to vary depending on the circumstances.'"[27] Here, the Commission can reasonably take action on a nationwide basis, as it recently did in the *BDS Order* and *Switched Access Declaratory Ruling*. In addition, the Commission forbore from Section 271 unbundling of fiber-to-the-home (FTTH) and fiber-to-the-curb (FTTC) facilities, the obligation to retain a 64 Kbps voice channel when retiring copper facilities, and most of the Section 271 competitive checklist requirements, including those related to unbundling, all on a nationwide basis.[28] In a series of local competition orders, the Commission similarly eliminated numerous UNEs on a nationwide basis, without a geographically granular analysis, including

[25] *Petition* at 3-7.

[26] Comments of Verizon, WC Docket No. 18-141 (filed Aug. 6, 2018), at 15.

[27] *Qwest Phoenix Forbearance Order*, 25 FCC Rcd at 8645 ¶ 41 (quoting *EarthLink v. FCC*, 462 F.3d at 8).

[28] *Petition for Forbearance of the Verizon Telephone Companies Pursuant to 47 U.S.C. § 160(c); SBC Communications Inc.'s Petition for Forbearance Under 47 U.S.C. § 160(c); Qwest Communications International Inc. Petition for Forbearance Under 47 U.S.C. § 160(c); BellSouth Telecommunications, Inc., Petition for Forbearance Under 47 U.S.C. § 160(c),* Memorandum Opinion and Order, 19 FCC Rcd 21496 (2004), *aff'd sub nom. EarthLink v. FCC,* 462 F.3d 1 (D.C. Cir. 2006); *Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) from Enforcement of Obsolete ILEC Legacy Regulations That Inhibit Deployment of Next-Generation Networks; Lifeline and Link Up Reform and Modernization; Connect America Fund*, WC Docket No. 14-192; WC Docket No. 11-42; WC Docket No. 10-90, Memorandum Opinion and Order, 31 FCC Rcd 6157 (2015) (*2015 USTelecom Forbearance Order*).

packet switching, FTTH loops, FTTC loops, circuit switching, shared transport, line sharing, dark fiber loops, UNEs for wireless providers, and entrance facilities.[29]

The CLECs make a futile attempt to distinguish the *2015 USTelecom Forbearance Order*'s grant of nationwide forbearance from the unbundling obligations in question there, claiming that it did not grant broad forbearance from any of the core local competition provisions of Section 251 or offer any basis for ignoring key differences across markets.[30] That is a red herring. The same Section 10 standards apply for broad and narrow forbearance petitions. As in its current *Petition*, USTelecom contended that the provisions at issue in the 2015 proceeding were "*entirely* unnecessary in all geographic markets because the changing communications landscape throughout the country has rendered them outmoded and harmful *as a general matter*."[31] The Commission agreed, finding that "the analysis used in the *Qwest Phoenix* context

[29] *See Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 01-338, *et al*., Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978 (2003) (*Triennial Review Order*), *corrected by Triennial Review Order Errata*, 18 FCC Rcd 19020 (2003), *aff'd in part, vacated in part, remanded in part, U.S. Telecom Ass'n v. FCC*, 359 F.3d 554 (D.C. Cir.), *cert. denied*, 543 U.S. 925 (2004); *Unbundled Access to Network Elements, Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket Nos. 04-313, *et al*., Order on Remand, 20 FCC Rcd 2533 (2005) (*Triennial Review Remand Order*). In arguing against a nationwide finding, the California PUC relies on a D.C. Circuit decision rejecting a nationwide finding of impairment for circuit switching. Comments of the California Public Utilities Commission at 9 (filed Aug. 6, 2018) (California PUC Comments). It overlooks the fact, however, that the Commission subsequently successfully defended a nationwide finding of *non-impairment* for that element before the same appellate court. *See Covad Communs. Co. v. FCC*, 450 F.3d 528, 547 (D.C. Cir. 2006) (rejecting CLEC petitioners' "that a nationwide non-impairment finding must be vacated because it is insufficiently 'granular.'")

[30] Incompas Motion for Summary Denial, WC Docket No. 18-141 (filed Aug. 6, 2018), at 14; Opposition of Granite, WC Docket No. 18-141 (filed Aug. 6, 2018), at 13.

[31] *2015 USTelecom Forbearance Order*, 31 FCC Rcd at 6164 ¶ 9.

is not the appropriate analysis for use in considering USTelecom's request."[32] The same is true here. The *Petition* is not governed by the *Qwest Phoenix* analysis.

B. The Requested Forbearance Is Fully Consistent with *Qwest Phoenix*.

Even if the Commission were to apply the *Qwest Phoenix* decision here, the result would be the same, given the ILECs' loss of the market power on which the 1996 Act's unbundling, avoided-cost resale, and Section 271 and 272 requirements and Rule 64.1903 were premised. As the Commission found in adopting *Qwest Phoenix*, "competitive conditions might justify forbearance from UNE obligations if the petitioner could demonstrate that it lacks market power in the relevant wholesale markets."[33] Further, "[e]ven in the absence of robust wholesale competition, forbearance relief might be warranted if, for example, there is sufficient full, facilities-based competition for relevant retail services."[34] Here, both conditions are met on a nationwide basis, as demonstrated in USTelecom's *Petition* and described above.

In a desperate effort to prove that the ILECs possess market power for consumer services, Granite and other CLECs claim that TDM voice services constitute a separate product market dominated by the ILECs. It is true that the ILECs are the primary providers of TDM voice services, but that is only because the ILECs' competitors have opted instead to provide newer, more feature-rich wireline and wireless alternatives. The vast majority of customers have migrated to those newer services, leaving only 11 percent of households still obtaining wireline TDM voice service from an ILEC.[35]

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[32] *Id.*

[33] *Qwest Phoenix Forbearance Order*, 25 FCC Rcd at 8671 ¶ 94.

[34] *Id.*

[35] *Petition* at 8.

In the recent *Wireline Infrastructure Second Report and Order*, the Commission adopted a new streamlined test to enable carriers to more quickly and easily discontinue legacy voice services and migrate to interconnected VoIP. Under this "alternative options test," a carrier can discontinue legacy voice services on a streamlined basis if it provides a stand-alone interconnected VoIP service throughout the affected service area, and at least one other stand-alone facilities-based voice service is available from another provider in that area.[36] While the Commission stopped short of making a finding that interconnected VoIP is in the same product market as legacy VoIP services, it strongly suggested that is the case, noting that interconnected VoIP embodies key components of those legacy services, including comparable network quality and service performance, disabilities access, and 911 access, thus assuring customers "a smooth transition to a voice replacement service that provides capabilities comparable to legacy TDM-based voice services and, often, numerous additional advanced capabilities."[37]

The Commission also declined to require replacement VoIP services to be interoperable with third-party devices and services such as alarm monitoring services, noting the existence of significant intermodal competition for those services and finding that marketplace forces had already pushed providers to offer such interoperability voluntarily.[38] The Commission also dismissed concerns that its streamlining process would adversely affect government customers, given carriers' long experience collaborating with those and other customers to ensure that they

[36] *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, Second Report and Order, FCC 18-74, ¶ 30 (2018) (*Wireline Infrastructure Second Report and Order*).

[37] *Id.* at ¶ 34.

[38] *Id.*

are given sufficient time to accommodate the transition to next-generation services so that key functionalities are not lost in that transition.[39]

Thus, CLEC requests to identify TDM voice services as a separate product market ignore the widespread migration from these legacy services to wireline and wireless substitutes *and* conflict with the Commission's priority of "[r]emoving regulatory barriers causing unnecessary costs or delay when carriers seek to transition from legacy networks and services to broadband networks and services[.]"[40] The nationwide forbearance sought by USTelecom is fully consistent with marketplace developments over the past two decades and will help achieve the Commission's objective of encouraging deployment of next-generation networks and closing the digital divide.[41] The Commission should therefore reject this misguided approach.

The fact that ILECs are still regulated as dominant for a small portion of the DS1 and DS3 BDS channel terminations they provide also does not preclude the nationwide relief sought by USTelecom. Wherever the ILECs are classified as dominant, their rates for those services will be governed by price cap regulation, thus ensuring the availability of just and reasonable alternatives to DS1 and DS3 channel terminations.

III. FORBEARANCE FROM SECTION 251(c) UNBUNDLING AND RESALE IS PLAINLY WARRANTED.

USTelecom's *Petition* satisfies each of the forbearance criteria in Section 10.

A. Unbundling and Avoided-Cost Resale Are Not Necessary To Ensure Just, Reasonable, and Nondiscriminatory Rates and Practices.

1. ILECs no longer possess the dominance on which these ILEC-specific requirements were premised.

[39] *Id.* at ¶ 38.

[40] *See id.* at ¶ 1.

[41] *See id.*

At the time of the 1996 Act, ILECs were considered dominant providers of every interstate telecommunications service they offered in their ILEC service territories. This classification was based on the ILECs' control of last-mile facilities that were necessary then to reach residential and business customers. Competitive alternatives to the ILECs were very limited, for telephony as well as most business services.[42] Cable companies were just beginning to enter telecommunications markets.[43] Similarly, mobile wireless services had supplanted wireline services for few, if any, customers. The Internet was in its infancy.

Given this backdrop, the 1996 Act included numerous provisions to enable local competition, including universal interconnection, number portability, right-of-way access, and reciprocal compensation requirements.[44] But it also contained unprecedented mandates applicable only to ILECs that were intended to "jump start" competition, including obligations to provide their competitors UNEs and avoided-cost resale.[45] While these Section 251(c) requirements are now familiar, they are also extraordinary and unheard of in other industries, particularly for those as competitive as telecommunications is today. Amazon and UPS are not required, and have never been required, to unbundle their distribution networks. Nor have

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[42] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Docket Nos. 96-98, 95-185, First Report and Order, 11 FCC Rcd 15499, 15508 (1996) ("Because an incumbent LEC serves virtually all subscribers in its local service area, an incumbent LEC has little incentive to assistant new entrants in their efforts to serve a greater share of the market.") (footnote omitted) (subsequent history omitted).

[43] Telecommunications Act of 1996, S.652, Conference Report, at 148 (Feb. 1, 1996) ("[L]arge, well established companies such as Time Warner and Jones Intercable are actively pursuing plans to offer local telephone service in significant markets."), https://www.congress.gov/104/crpt/srpt230/CRPT-104srpt230.pdf.

[44] 47 U.S.C. §§ 251(a)(1), (b)(2), (b)(4), (b)(5).

[45] *Petition* at 5 (quoting Remarks of Sen. Breaux (La.) on Pub. Law 104-104 (1995), 141 Cong. Rec. 15572 (1995)).

Netflix and Apple been required to allow their competitors to resell their products at an avoided-cost discount. The intrusive requirements in Section 251(c)(3) and (c)(4) were premised on the existence of ILEC market power and the need to counter that market power through ILEC network and service sharing requirements.[46]

Regardless whether these assumptions were true in the past, they are not today. More than 20 years has passed since the Commission adopted rules implementing these local competition provisions. Today's telecommunications marketplace is barely recognizable in comparison. The percentage of U.S. households with ILEC switched landline voice service has declined from 93 percent in 2003 to a projected 11 percent at the end of this year, largely due to migration away from the ILECs' legacy services.[47] Whether living in Washington, D.C., or Washington, Mississippi, an American is much more likely to rely on mobile wireless service than ILEC wireline service.[48] By the end of this year, fully 60 percent of American households are expected to rely solely on wireless voice service. Even among wireline providers, ILECs have a diminished presence, with approximately 55 percent of households with telephones obtaining landline service from a non-ILEC provider.[49] And that doesn't even account for the partial but widespread replacement of traditional ILEC services with technologies that had just

[46] As noted by USTelecom, Congress also intended that these requirements be temporary. *Petition* at 3-7.

[47] *Id.* at 7.

[48] As of the end of 2016, 55.3% and 58.9% of D.C. and Mississippi households, respectively, relied exclusively on wireless voice service, and another 17.8% and 13.1% of households in those states, respectively, were "wireless-mostly." CDC National Center for Health Statistics, *National Health Interview Survey Early Release Program*, Table 1. Modeled estimates (with standard errors) of the percent distribution of household telephone status for adults aged 18 and over, by state: United States, 2016, available at: https://www.cdc.gov/nchs/data/nhis/earlyrelease/Wireless_state_201712.pdf.

[49] *Petition* at 9.

been or were not yet introduced in 1996, such as email and social media. The story is similar on the business side, where ILECs now face intense competition and migration away from increasingly obsolete TDM services that are the primary focus of unbundling.[50] As demonstrated by USTelecom, the perceived dominance that led to the ILEC-specific unbundling and resale obligations has evaporated.

2. Unbundling and avoided-cost resale do not play an important role in the marketplace.

The availability of unbundling and avoided-cost resale has played almost no role in these transformational marketplace developments. That is clearly true for residential services. Only a small percentage of residential customers get service through UNEs or avoided cost resale. For example, less than 3 percent of residential wireline customers in California are served over UNEs, according to the California PUC.[51] And even for those customers, forbearance from unbundling and ILEC resale requirements will not eliminate the ILECs' interstate telecommunications services, which are governed by the Commission's service discontinuance rules. Thus, for residential services, the elimination of UNEs, and the resulting transition to commercial products, will not undermine just, reasonable, and nondiscriminatory rates, terms, and conditions.

A similar dynamic has occurred for business services. In CenturyLink's serving area, CLECs generally purchase UNEs to serve business customers in urban and suburban areas. UNEs are typically purchased in census blocks that are four times as dense as those where UNEs are not purchased. Notably, 92 percent of UNEs are purchased within municipal boundaries, as compared to 69 percent and 83 percent of CenturyLink's retail residential and business lines,

[50] *Petition* at 11-15.

[51] California PUC Comments, WC Docket No. 18-141 (filed Aug. 6, 2018), at 16.

respectively. But even where they are offered, UNE-based services are not a significant factor in the competitive landscape. Business customers have been migrating away from TDM services for years, as Ethernet services have experienced double digit growth.[52] Not surprisingly, this growth has attracted a long list of facilities-based competitors, totaling nearly 500 by the Commission's count.[53] CLECs such as Zayo and Birch are investing and expanding their competitive fiber networks with successful results.[54] But, as noted in the *BDS Order*, "the most dramatic change in the market over the past decade" has been the entry of cable into BDS provisioning, in direct competition with ILECs.[55] Cable companies such as Comcast, Charter, and Cox have steadily moved upmarket to serve single and multilocation enterprise customers. For example, Comcast has described its Enterprise Services unit as "going gangbusters," with wins of a fast food restaurant chain with about 6,000 locations and another retailer with about 13,000 locations.[56]

CenturyLink thus continues to view cable companies as its primary BDS competitors.[57] CenturyLink's deployment and pricing decisions therefore are geared toward competing more effectively with cable, as well as other facilities-based, providers. When a cable company deploys fiber in a given area, it can offer speeds and services that CenturyLink can match only if it deploys fiber itself. That is not the case when CenturyLink is competing with a UNE- or

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[52] *BDS Order*, 32 FCC Rcd at 3490 ¶ 68.

[53] *Id.* at 3461 ¶ 2.

[54] *Id.* at 3461 ¶ 2, 3488-89 ¶¶ 63-65.

[55] *Id.* at 3485 ¶ 55.

[56] THOMSON REUTERS STREETEVENTS, *Edited Transcript: CMCSA – Comcast Corp at Deutsche Bank Media, Internet and Telecom Conference* (Mar. 6, 2017), available at: http://files.shareholder.com/downloads/CMCSA/3534339702x0x931703/17D15A8F-BC67-4421-8F0B-D6250C3898E8/Comcast_at_Deutsche_Bank_Conference_Transcript.pdf.

[57] *See BDS Order*, 32 FCC Rcd at 3485 ¶ 55.

resale-based provider that is limited by the copper loop facilities over which its services are provided. Thus, the elimination of UNEs will not cause CenturyLink to invest less in fiber deployment, despite the claims of CLECs to the contrary. Conversely, the requested forbearance and resulting increased demand for IP-based services are likely to spur additional investment in fiber facilities.

The CLECs devote many pages to examples of the services they provide using UNEs and resale, and the customers they serve. USTelecom acknowledged that there are a significant but declining number of UNEs and resold lines in place, which is why it proposed a lengthy transition. But it also has demonstrated persuasively that these entry methods are no longer necessary to ensure just and reasonable rates, terms, and conditions, or unreasonable discrimination. Certain CLECs may depend on UNEs or resale under their current business plan, but that's not the relevant standard. As the Commission found last year in terminating the UNE-P replacement rule, its duty is to protect efficient competition, not competitors.[58] Regulation cannot reasonably be maintained to preserve certain carriers' business plans, particularly when those business plans are stifling the transition to next-generation facilities and services.

In CenturyLink's experience, UNE- and resale-based CLECs sometimes offer cut-rate prices, enabled by their reliance on below-market UNEs and resale, but they do not typically provide unique services unavailable from other providers. For example, Granite is not the industry's only one-stop provider. National IXCs, such as AT&T, Sprint, and Verizon, have served customers with nationwide locations for decades. More recently, cable companies have moved into this competitive space with growing success. Cable companies have also targeted

[58] *BDS Order*, 32 FCC Rcd at 3582-83 ¶ 290.

the small and medium business customers that CLECs have served with UNEs and resale. In the residential market, while UNE DS0 loops can be used to provide residential broadband services, customers are increasingly demanding speeds that are not easily obtainable over copper loops.

3. Competition does not depend on UNEs and avoided-cost resale, particularly given the availability of commercial alternatives.

UNEs and resale were also not a factor in the Commission's competitive analysis in the *BDS Order*. The Commission found that the use of UNEs allowed CLECs to compete in lower bandwidth services, particularly against legacy DS1s and DS3s, but it noted that use and availability of UNEs is diminishing and questioned the extent to which they would remain available in the future.[59] Its analysis of competitive provider facilities therefore did not include UNEs.[60] Thus, while CLECs are using UNE loops to provide Ethernet-over-copper, the Commission has not considered this a significant source of competition in the BDS marketplace. Nor was resale a factor in that analysis. Nevertheless, the Commission found that the BDS marketplace is subject to intense competition from a wide variety of providers.

CenturyLink and its predecessor companies have long competed in this area both within and outside of CenturyLink's ILEC service area. Prior to its combination with CenturyLink, Level 3 was the nation's second largest provider of Ethernet services. Level 3 achieved this success by offering high quality services and targeted facility investments. It used UNEs only sparingly. Level 3 deployed its own facilities to thousands of locations and purchased wholesale access services from providers of all types, including CLECs, cable providers, and ILECs. Similarly, pre-merger CenturyLink relied on hundreds of access suppliers outside its ILEC

[59] *BDS Order*, 32 FCC Rcd at 3476 ¶¶ 32-34. For CenturyLink, UNEs have been declining 12 percent annually.

[60] *BDS Order*, 32 FCC Rcd at 3520 ¶ 132 n. 401.

serving area, including through substantial and growing purchases from cable providers. It purchased UNEs only in very limited circumstances.

CenturyLink's strategy remains similar as a combined company. It has an embedded base of DS0 UNE loops and EELs and DS3 EELs but no longer purchases these types of UNEs to serve new or existing customers.[61] Nor does it buy dark fiber transport or use UNE DS0 loops to provide Ethernet-over-copper. CenturyLink sometimes converts DS1 BDS circuits to DS1 loops or EELs, but only to serve customers that were initially served over non-UNE facilities.[62]

CenturyLink views UNEs as a short-term strategy that is part of a larger transitional process in which customers are migrating from TDM services to Ethernet and other packet-based services. While DS1 UNEs can be utilized to provide packet-based services, it is more efficient to utilize non-TDM products to deliver those services. And while some customers simply prefer to remain on TDM-based facilities, out of inertia or concerns about change, CenturyLink believes that those customers will increasingly transition to services provided over non-TDM facilities in the near to medium term, particularly as the prices of TDM services increase. CenturyLink thus relies on UNEs primarily as a tool to manage its costs during this transitional period. For example, CenturyLink may purchase a UNE to serve an individual customer location for the remainder of a three-year customer contract when the early termination penalties associated with a special access circuit purchased on a longer term make the UNE more cost effective.[63]

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[61] Ex parte letter from Nicholas G. Alexander, CenturyLink, to Marlene H. Dortch, Secretary, (FCC), Petition for Forbearance of USTelecom – The Broadband Association, WC Docket No. 18-141 (Aug. 1, 2018).

[62] *Id*. at 2.

[63] *Id.*

Neither CenturyLink nor its predecessor companies have used UNEs as a "stepping stone" to fiber deployment when operating as a CLEC. Instead their decision whether to deploy fiber to a location has depended on whether they believe they can recover the expense of that deployment in a reasonable period based on their revenues, and whether that deployment is necessary to compete with fiber-based competitors. Within its ILEC service territory, CenturyLink's decision whether to build depends on similar considerations.

CenturyLink believes that the transition of 18 months from the effective date of the forbearance order will allow UNE purchasers and their customers adequate time to make alternative arrangements, especially since they have been on notice of this change since the *Petition* was filed in May. The transition will prompt some customers to move to Ethernet and other IP services who have retained TDM services primarily through inertia. Thus the requested forbearance will accelerate the existing transition away from TDM services, as TDM equipment increasingly becomes obsolete and difficult to procure.

Not surprisingly, some CLECs would prefer to be able to continue to purchase UNEs because they are typically cheaper than alternative services.[64] Maintaining cheap inputs for CLECs is not a valid basis for retaining these regulatory mandates if forbearance is justified, which it is here. It is also not surprising that alternative services carry higher prices since UNE rates are set by regulation. UNE prices were set by state commissions, generally in the late 1990s or early 2000s, based on their conception of TELRIC, which sometimes varied widely. In markets where UNE prices were set exceptionally low, the difference from those and market-set commercial rates will be larger. Yet there are some states in CenturyLink's ILEC service

[64] *See, e.g.*, Comments of Blackfoot Communications, Inc., WC Docket No. 18-141 (filed Aug. 6, 2018), at 5 (Blackfoot Comments).

territory in which UNE rates are higher than typical commercial rates, especially in more rural areas, where TELRIC loop costs exceed commercial channel termination rates. Sonic's claim that unbundled loops are uniquely available from ILECs points to the intrusiveness of the Act's unbundling regime, requiring ILECs to offer products at rates that no company would voluntarily choose to offer.[65] The fundamental changes to the marketplace outlined in USTelecom's *Petition* have rendered the unbundling regime both unnecessary and no longer consistent with the public interest.

With that said, there should be every expectation that commercial alternatives will exist for these purchasers. CenturyLink wants to keep its CLEC customers on its network. CenturyLink has a long history of providing commercial alternatives for offerings no longer required by regulation. When the Commission eliminated UNE-P in 2005, CenturyLink developed a commercial alternative, now known as CenturyLink™ Local Services Platform (CLSP™).[66] CLSP is a collection of commercial platform services allowing CLECs to provide business, residential, Centrex, Integrated Services Digital Network Basic Rate Interface (ISDN PRI), private branch exchange (PBX), public access lines (PAL), and voice messaging services.[67] Thirteen years after the Commission ended the UNE-P mandate, CenturyLink still generates substantial, though declining, revenues from its sale of commercial products that replaced UNE-P.

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[65] *See* Opposition of Sonic Telecom, LLC, WC Docket No. 18-141 (filed Aug. 6, 2018), at 13-16.

[66] CenturyLink website, *Wholesale: Products and Services, CenturyLink™ Local Services Platform (CLSP™) – General Information – V18.0*, https://www.centurylink.com/wholesale/pcat/localservicesplatform.html.

[67] *Id.*

CenturyLink also offers commercial alternatives to other UNEs the Commission previously eliminated, including line sharing and shared distribution loops.[68] And, in nine wire centers in the Omaha MSA, CenturyLink offers a set of commercial DS0 loops available since the Commission eliminated CenturyLink's loop and transport unbundling requirements in those wire centers in 2005.[69] The terms and conditions for the DS0 commercial offering are similar to CenturyLink's DS0 UNE loop offering,[70] as are the prices, with monthly recurring rates ranging from $16 to $31.[71]

CenturyLink also makes most of its telecommunications services available for resale via commercial agreements. Granite and other CLECs openly acknowledge that they utilize such commercial offerings but ask the Commission to retain the Section 251(c)(4) resale requirement to preserve their leverage in commercial negotiations.[72] This is not a valid basis for retaining a

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[68] *Id., Wholesale: Products and Services, Commercial Line Sharing – V19.0.*, https://www.centurylink.com/wholesale/pcat/commlinesharing.html; *id., Wholesale: Products and Services, Commercial Shared Distribution Loop (SDL) – V16.0*, https://www.centurylink.com/wholesale/pcat/commshareddist.html. Commercial shared distribution loop is similar to commercial line sharing except it is provided over the distribution of a loop, rather than the entire loop. *Id.*

[69] *Qwest Omaha Forbearance Order*, 20 FCC Rcd at 19455 ¶ 79. Thus, the claims of the ICG CLECs (Comments of ICG CLEC Coalition, WC Docket No. 18-141 (filed Aug. 7, 2018), at 18) and TPx (Opposition of U.S. TelePacific Corp., Mpower Communications Corp., and Arrival Communications, Inc., all d/b/a TPx Communications, WC Docket No. 18-141 (filed Aug. 6, 2018), at 33) that ILECs have never offered DS0 loops as a voluntary product are wrong.

[70] *See* CenturyLink website, *Wholesale: Products and Services, Commercial DS0 Loop Facility – General Information – V14.0*, *https://www.centurylink.com/wholesale/pcat/commdsoloopfac.html*.

[71] CenturyLink website, *Wholesale: Products & Services, Commercial Agreements*, https://www.centurylink.com/wholesale/clecs/commercialagreements.html. Template agreements showing the rates, terms, and conditions for the commercial DS0 loop offering are available from the pull-down menu labeled "CenturyLink Commercial DS0 Loop Facility OFO." *Id.*

[72] *See, e.g.*, Opposition of Granite, at 25.

requirement that no longer is necessary to ensure just, reasonable, and nondiscriminatory rates and practices.

4. Dark fiber transport and other UNEs are no more necessary than UNE loops.

CLECs focus primarily on the elimination of UNE loops but also claim that competition depends on maintaining unbundled dark fiber transport. That contention directly conflicts with the Commission's conclusion in the *BDS Order* that transport is competitive on a nationwide basis, based on its review of the extensive data it had collected. Those data showed that the vast majority of locations with BDS demand have competitive fiber within close proximity.[73] The relatively low expected per-unit cost of deploying high-capacity interoffice transport facilities has made these deployments particularly attractive to new entrants.[74] These Commission findings and the data upon which they are based are not directly affected by the 8th Circuit's remand of the *BDS Order*.

Nor does the evidence provided by the CLECs support their asserted continuing need for UNE dark fiber transport. For example, Mammoth relies on UNE dark fiber transport acquired from CenturyLink apparently to serve thousands of end users,[75] which would seem to justify deployment of its own facilities. Blackfoot cites the need for UNE dark fiber transport to connect the 340-mile distance between Missoula and Billings, Montana.[76] However, since those cities are in different LATAs, UNE dark fiber transport, which is essentially an access service, is not available for this connection. In any case, the fundamental economics of interoffice

[73] *BDS Order*, 32 FCC Rcd at 3496 ¶ 79.

[74] *Id.*, 32 FCC Rcd at 3498 ¶ 82.

[75] Incompas, *et al*. Opposition, WC Docket No. 18-141, Attachment 13 (Declaration of Brian Worthen) (filed Aug. 6, 2018).

[76] Blackfoot Comments at 8.

transport, typically carrying high volume services between points of aggregation, generally make it economic for self-deployment and led the Commission to largely deregulate transport services through Phase II pricing flexibility in the early 2000s.[77] The elimination of UNE transport obligations, including dark fiber, reflects the natural progression of that policy and is fully justified.

Requests for retention of other UNEs are equally unjustified. For example, Cox asks for retention of UNEs associated with 911/E911 databases, operations support systems (OSS), and certain subloops, without explaining why these elements are still needed or acknowledging the arguments in USTelecom's *Petition* that applied to all UNEs.[78] For its part, CenturyLink has largely outsourced its 911/E911 services. OSS are naturally coupled to the availability of the UNEs they support. And, given Cox's relative market position, it is difficult to understand how the Commission could reasonably subject subloop unbundling to ILECs alone.

B. Unbundling and Avoided-Cost Resale Are Not Necessary To Protect Consumers.

UNEs and avoided-cost resale also are not necessary to protect consumers. Nationally, only a tiny percentage of customers are served via UNEs.[79] Indeed most customers have moved off ILECs' networks entirely, as reflected in the dramatic line losses outlined in the *Petition*. There is no shortage of facilities-based alternatives. Given these developments, the elimination of unbundling and avoided-cost resale will be imperceptible to nearly all consumers. For the small percentage of customers that are affected, the *Petition*'s 18-month transition will provide

[77] *BDS Order*, 32 FCC Rcd at 3495-97 ¶¶ 77-79.

[78] Cox Motion for Partial Summary Denial and Comments, WC Docket No. 18-141 (filed Aug. 6, 2018), at 3-7.

[79] *Petition* at 16-17.

sufficient opportunity to move to alternative providers, if necessary. Past reductions in unbundling requirements, such as the elimination of UNE-P, have not had a negative impact on consumers. There is no reason to believe that this transition will be any different. Resale will still be available, just not at an avoided-cost discount.

Continued unbundling and avoided-cost resale also are not necessary or appropriate to preserve TDM functionality. Retail TDM services will continue to be available until discontinued subject to the Commission's Section 214 process, where consumers' interests in these services will be adequately protected. The same is true for government purchasers of TDM services. In its recent letter, NTIA supported the Commission's efforts to accelerate the transition to IP and expressed faith in the Commission's determination that carriers will consult with government agencies to avoid harmful impacts to customers and that extraordinary situations can be addressed on a case-by-case basis.[80]

C. Forbearance from These Requirements Will Serve the Public Interest.

Both UNEs and avoided-cost discount have outlived their usefulness and are now a drag on the transition to next-generation facilities and services. As shown in USTelecom's *Petition* and supporting documentation, the requested forbearance will accelerate this transition and lead to significant investment. Forbearance from these outdated regulatory requirements will also avoid the substantial expense associated with offering and providing these regulated products.

Just as importantly, forbearance will create a more rational regulatory structure that reflects today's marketplace realities and promotes efficient investment and competition.

[80] Letter from David J. Redl, Assistant Secretary for Communications and Information, NTIA, to Ajit Pai, Chairman, FCC, WC Docket No. 17-84, at 2-3 (July 19, 2018).

IV. THE ABSENCE OF ANY MEANINGFUL OPPOSITION TO THE FORBEARANCE REQUESTS REGARDING SECTION 272(e)(1), RULE 64.1903, AND SECTION 271(c)(2)(B)(iii) CONFIRMS THE NEED TO ELIMINATE THOSE ARCHAIC REGULATIONS.

There was virtually no opposition in the initial comments to the requests in the *Petition* that the Commission eliminate Section 272(e)(1) and related requirements, Commission Rule 64.1903, and Section 271(c)(2)(B)(iii). This simply confirms what the *Petition* made plain – that it is long past time to eliminate these last remnants of the Commission's legacy long distance framework.

These regulations have lost any public policy value and the case for their elimination has been building for well over a decade and can no longer be debated. Section 272(e)(1) is literally the sole remaining component to the 1996 Act's Section 272 RBOC-specific long distance separate affiliate framework – a framework the Commission determined *in 2007* was no longer warranted due to developments in competition in the relevant markets.[81] Similarly, Section 271(c)(2)(B)(iii) is the last remaining element in the Competitive Checklist, which was long ago implemented and made irrelevant by competition. Rule 64.1903 comes from an even more ancient era by telecommunications standards – as it has its origins in the Commission's *Competitive Carrier Proceedings* of the 1980's.[82] In its 2013 *US Telecom Forbearance Order*,

[81] *Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements, 2000 Biennial Regulatory Review Separate Affiliate Requirements of Section 64.1903 of the Commission's Rules, Petition of AT&T Inc. for Forbearance Under 47 U.S.C. 160(c) with Regard to Certain Dominant Carrier Regulations for In-Region, Interexchange Services*, WC Docket Nos. 02-112, *et al*., Report and Order and Memorandum Opinion and Order, 22 FCC Rcd 16440 (2007) (*Section 272 Sunset Order*).

[82] *Petition of USTelecom for Forbearance Under 47 U.S.C. § 160(c) from Enforcement of Certain Legacy Telecommunications Regulations*, WC Docket No. 12-61, Memorandum Opinion and Order and Report and Order and Further Notice of Proposed Rulemaking and Second Further Notice of Proposed Rulemaking, 28 FCC Rcd 7627, 7688-89 ¶ 137 (and citations referenced therein) (2013) (*2013 US Telecom Forbearance Order*), *aff'd sub nom. Verizon v. FCC*, 770 F.3d 961 (D.C. Cir. 2014).

the Commission granted forbearance to price cap carriers from Rule 64.1903, but conditioned that forbearance on price cap carriers voluntarily becoming bound by certain Section 272(e)(1) and (e)(3) mandates applicable, under each statute's terms, only to RBOCs.[83] Not surprisingly, no carrier has taken the Commission up on that invitation. The Commission's 2017 *Part 32 Order* eliminated the remaining 272(e)(3) requirements.[84] And, in responding to a prior request for forbearance from Section 272(e)(1), the Commission, in its *2015 USTelecom Forbearance Order*, acknowledged the undeniable evidence of the disappearance of the residential long-distance market as a relevant market but found that USTelecom had presented insufficient competition evidence at that time regarding the business long distance market.[85] Thereafter, the Commission, in the *Technology Transitions Declaratory Ruling*, acknowledged that the level of competition in both the consumer and business long distance market had reached such a vibrant level – and, perhaps more importantly, the relevance of long distance as a separate service/market had diminished to such an extent – that ILECs were no longer dominant in the provision of switched access services writ large.[86] More recently, in the *BDS Order*, the Commission concluded that "[t]o a large extent in the business data services market, the competition envisioned in the Telecommunications Act of 1996 has been realized[.]"[87] Finally, the *Petition* itself documents in great detail the extent of competition currently in the business

[83] *2013 US Telecom Forbearance Order*, 28 FCC Rcd at 7691-93 ¶¶ 142-48.

[84] *Comprehensive Review of the Part 32 Uniform System of Accounts; Jurisdictional Separations and Referral to the Federal-State Joint Board*, WC Docket No. 14-130, CC Docket No. 80-286, Report and Order, 32 FCC Rcd 1735, 1748 ¶ 43 (2017).

[85] *2015 USTelecom Forbearance Order*, 31 FCC Rcd at 6179-82 ¶¶ 40-45.

[86] *Technology Transitions Declaratory Ruling*, 31 FCC Rcd at 8289-90 ¶¶ 17-18, 8292-94 ¶¶ 26-30, 8295 ¶¶ 33-34.

[87] *BDS Order*, 32 FCC Rcd at 3462 ¶ 5 (footnote omitted).

long distance service market.[88] It also addresses the concerns the Commission previously raised in declining to forbear from Section 271(c)(2)(B)(iii).

In the face of this overwhelming case for forbearance, it is not surprising that any opposition in the initial comments to the requests for forbearance from these outdated requirements is meek at best. Only a handful of parties even discuss these requests substantively in their comments.[89] And, each of these present merely cursory, conclusory discussions that either seek to re-litigate the undeniable competition findings of the *BDS Order* and other Commission orders discussed above[90] or assert without basis the inadequacy of more general Section 202 non-discrimination standards applicable to all types of carriers – citing concerns applicable to all types of carriers.[91]

The Commission should grant the forbearance requests in the *Petition* regarding Section 272(e)(1) and 271(c)(2)(B)(iii) and Rule 64.1903.

[88] *Petition* at 11-15, 35-37, and Appendix B, attached thereto, at 2, 7-11.

[89] *See generally* Opening Comments of Raw Bandwidth Telecom, Inc., *et al*. (Raw Bandwidth), WC Docket No. 18-141 (filed Aug. 6, 2018); Opposition of Public Knowledge, *et al*. (Public Knowledge), WC Docket No. 18-141 (filed Aug. 6, 2018); Incompas, *et al*. Opposition; and Comments of Center for Democracy & Technology (CDT), WC Docket No. 18-141 (filed Aug. 6, 2018).

[90] Opening Comments of Raw Bandwidth, at 30-31; Opposition of Public Knowledge, at 26; Incompas, *et al*. Opposition, at 9, 76.

[91] Opposition of Public Knowledge, at 26-27; Incompas, *et al*. Opposition, at 76-77; and Comments of CDT, at 9-10.

V. CONCLUSION

For the reasons stated above, the Commission should take the action described herein.

Respectfully submitted,

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